

**CHAPTER 16  
CONTRIBUTIONS, RECORDS AND REPORTS**

**Authority**

N.J.S.A. 43:21-1 et seq.

**Source and Effective Date**

R.2005 d.108, effective March 10, 2005.  
See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

**Chapter Expiration Date**

Chapter 16, Contributions, Records and Reports, expires on March 10, 2010.

**Chapter Historical Note**

Chapter 16, Contributions, Records and Reports, was filed and became effective prior to September 1, 1969.

Subchapter 20, Work Relief and Work Training Programs, was adopted as R.1987 d.102, effective February 17, 1987. See: 18 N.J.R. 1683(a), 19 N.J.R. 363(b).

Subchapter 21, Zip Code Reporting, was adopted as R.1989 d.39, effective January 17, 1989. See: 20 N.J.R. 2625(b), 21 N.J.R. 167(a).

Subchapter 10, Hearings, was repealed and Subchapter 22, Hearings, was adopted by R.1989 d.208, effective April 17, 1989. See: 21 N.J.R. 281(a), 21 N.J.R. 1015(a).

Pursuant to Executive Order No. 66(1978), Chapter 16, Contributions, Records and Reports, was readopted as R.1990 d.217, effective March 23, 1990. See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

Subchapter 23, Services Excluded from Coverage by the Unemployment Compensation Law, was adopted as R.1995 d.84, effective February 6, 1995. See: 26 N.J.R. 4730(a), 27 N.J.R. 501(a).

Pursuant to Executive Order No. 66(1978), Chapter 16, Contributions, Records and Reports, was readopted as R.1995 d.138, effective February 9, 1995, and Subchapter 11, Excess Worker Deductions, was recodified as Subchapter 10, Subchapter 11, Special Employment Situations, was adopted as new rules, and Subchapter 17, Witness Fees and Mileage Allowances, was repealed by R.1995 d.138, effective March 6, 1995. See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Pursuant to Executive Order No. 66(1978), Chapter 16, Contributions, Records and Reports, was readopted as R.2000 d.68, effective January 27, 2000. See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

Subchapter 24, Employee Leasing Companies, was adopted as R.2002 d.294, effective September 3, 2002. See: 34 N.J.R. 1892(a), 34 N.J.R. 3089(a).

Chapter 16, Contributions, Records and Reports, was readopted as R.2005 d.108, effective March 10, 2005. See: Source and Effective Date. See, also, section annotations.

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. IDENTIFICATION OF COVERED WORKERS**

- 12:16-1.1 Ascertainment of worker's Social Security account number
- 12:16-1.2 Reporting of worker's Social Security account number
- 12:16-1.3 Evidence of application for Social Security account number
- 12:16-1.4 Employer to inform worker without Social Security account number
- 12:16-1.5 Employer to inform worker in certain cases

**SUBCHAPTER 2. RECORDS**

- 12:16-2.1 Payroll records
- 12:16-2.2 Individual worker records
- 12:16-2.3 Records defined
- 12:16-2.4 Records retention

**SUBCHAPTER 3. POWER OF ATTORNEY**

- 12:16-3.1 Power of attorney: requirements

**SUBCHAPTER 4. REMUNERATION**

- 12:16-4.1 Remuneration defined
- 12:16-4.2 Sick leave payments
- 12:16-4.3 Fringe benefit payments
- 12:16-4.4 Section 401(k) Plans
- 12:16-4.5 Push payments
- 12:16-4.6 Officer's remuneration
- 12:16-4.7 Back pay, residuals, aliens
- 12:16-4.8 Other remuneration
- 12:16-4.9 Tips and gratuities
- 12:16-4.10 Temporary disability payments
- 12:16-4.11 Personal use of a company vehicle
- 12:16-4.12 Dependent care assistance programs
- 12:16-4.13 Interest on a below-market interest rate loan
- 12:16-4.14 Section 125 cafeteria plans
- 12:16-4.15 Stock options
- 12:16-4.16 Deferred payments
- 12:16-4.17 Co-employed individuals, employee leasing clients

**SUBCHAPTER 5. CONTRIBUTIONS BY EMPLOYERS**

- 12:16-5.1 Accrual as remuneration earned
- 12:16-5.2 Due dates
- 12:16-5.3 Payment of contributions
- 12:16-5.4 First contributions of newly subject employer
- 12:16-5.5 Installment payments
- 12:16-5.6 Voluntary payment of additional contributions
- 12:16-5.7 Payment in guaranteed funds
- 12:16-5.8 Seamen's wages
- 12:16-5.9 Special fringe benefit agent accounts

**SUBCHAPTER 6. REIMBURSEMENT OPTION FOR NON-PROFIT ORGANIZATIONS**

- 12:16-6.1 Application
- 12:16-6.2 Financial security requirements
- 12:16-6.3 Termination
- 12:16-6.4 Liability

**SUBCHAPTER 7. CONTRIBUTORY OPTION FOR GOVERNMENTAL EMPLOYERS**

- 12:16-7.1 Purpose
- 12:16-7.2 Definitions
- 12:16-7.3 Application
- 12:16-7.4 Finance
- 12:16-7.5 Use of surplus funds
- 12:16-7.6 Termination
- 12:16-7.7 Liability
- 12:16-7.8 Penalties

**SUBCHAPTER 8. GROUP ACCOUNTS**

- 12:16-8.1 Establishment
- 12:16-8.2 Participation
- 12:16-8.3 Termination
- 12:16-8.4 Liability
- 12:16-8.5 Dissolution

**SUBCHAPTER 9. CONTRIBUTIONS BY WORKERS**

- 12:16-9.1 Workers' contribution-trust fund
- 12:16-9.2 Evidence of amounts withheld furnished workers
- 12:16-9.3 Reporting and paying workers' contributions

**SUBCHAPTER 10. EXCESS WORKER DEDUCTIONS**

- 12:16-10.1 Excess disability deductions
- 12:16-10.2 Excess unemployment, health care, workforce development and supplemental workforce fund for basic skills deductions
- 12:16-10.3 Wage deduction statements
- 12:16-10.4 Refund of excess deductions
- 12:16-10.5 Assessment for governmental reimbursable employers

**SUBCHAPTER 11. SPECIAL EMPLOYMENT SITUATIONS**

- 12:16-11.1 Real estate managing agents
- 12:16-11.2 Limited liability companies

**SUBCHAPTER 12. CONCURRENT EMPLOYMENT BY RELATED EMPLOYERS**

- 12:16-12.1 Separate accounts
- 12:16-12.2 Common paymaster

**SUBCHAPTER 13. REPORTS**

- 12:16-13.1 Reports required
- 12:16-13.2 Force and effect of instructions relating to reports
- 12:16-13.3 Penalty for failure to file reports
- 12:16-13.4 Penalty abatement
- 12:16-13.5 Wages paid reported currently
- 12:16-13.6 Reporting wages, remuneration and other information
- 12:16-13.7 Wage reporting
- 12:16-13.8 Suspension of business
- 12:16-13.9 Transfer of business
- 12:16-13.10 Withdrawal to inactive status

**SUBCHAPTER 14. ELECTION OF COVERAGE**

- 12:16-14.1 Application for election
- 12:16-14.2 Date of filing
- 12:16-14.3 Effective date of election
- 12:16-14.4 Election subject to approval
- 12:16-14.5 Effect of election approval

**SUBCHAPTER 15. JOINT ACCOUNTS**

- 12:16-15.1 Application for a voluntary joint account
- 12:16-15.2 Eligibility for a voluntary joint account
- 12:16-15.3 Effective date; duration of a voluntary joint account
- 12:16-15.4 Maintenance of a voluntary joint account
- 12:16-15.5 Modification of a voluntary joint account
- 12:16-15.6 Dissolution of a voluntary joint account

**SUBCHAPTER 16. NOTICE TO WORKERS**

- 12:16-16.1 Unemployment compensation coverage
- 12:16-16.2 (Reserved)

**SUBCHAPTER 17. (RESERVED)****SUBCHAPTER 18. TRANSFER OF EMPLOYMENT EXPERIENCE**

- 12:16-18.1 Transfer of predecessor's whole experience
- 12:16-18.2 Rate following transfer of predecessor's whole experience
- 12:16-18.3 Transfer of predecessor's experience in part
- 12:16-18.4 Rate following transfer of predecessor's experience in part

**SUBCHAPTER 19. BENEFIT CHARGES**

- 12:16-19.1 Employer's account charged; notice
- 12:16-19.2 Annual summary statement

**SUBCHAPTER 20. WORK RELIEF AND WORK TRAINING PROGRAMS**

- 12:16-20.1 Work relief and work training programs: exempt employment

**SUBCHAPTER 21. ZIP CODE REPORTING**

- 12:16-21.1 Scope
- 12:16-21.2 Definitions
- 12:16-21.3 Reporting requirement

**SUBCHAPTER 22. HEARINGS**

- 12:16-22.1 Scope
- 12:16-22.2 Application
- 12:16-22.3 Informal conference
- 12:16-22.4 Formal hearing
- 12:16-22.5 Witness fees and mileage allowances subpoena ad testificandum
- 12:16-22.6 Decision

**SUBCHAPTER 23. SERVICES EXCLUDED FROM COVERAGE BY THE UNEMPLOYMENT COMPENSATION LAW**

- 12:16-23.1 Exempt services
- 12:16-23.2 Evidence of FUTA exemption

**SUBCHAPTER 24. EMPLOYEE LEASING COMPANIES**

- 12:16-24.1 Application and scope
- 12:16-24.2 Definitions
- 12:16-24.3 Initial and annual registration
- 12:16-24.4 Financial security requirements
- 12:16-24.5 Payroll tax certification
- 12:16-24.6 Workers' compensation insurance
- 12:16-24.7 Dissolution of employee leasing agreement
- 12:16-24.8 Rescission of the registration of an employee leasing company or professional employer organization
- 12:16-24.9 Dissolution of an employee leasing company or professional employee organization
- 12:16-24.10 Violations
- 12:16-24.11 Appeals

**SUBCHAPTER 1. IDENTIFICATION OF COVERED WORKERS****12:16-1.1 Ascertainment of worker's Social Security account number**

Each employer shall ascertain the Social Security account number of each worker in employment subject to the Unemployment Compensation Law and list such number on the employer's records.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

**12:16-1.2 Reporting of worker's Social Security account number**

Each employer shall report a worker's Social Security account number in making any report required by the Department with respect to such worker.

**12:16-1.3 Evidence of application for Social Security account number**

(a) If an employer has a worker engaged in employment who does not have a Social Security account number, the worker shall be requested to provide a receipt issued by an officer of the Social Security Administration indicating that the worker has filed an application for an account number.

(b) The receipt shall be retained by the worker, but a copy or facsimile shall be retained by the employer.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### 12:16-1.4 Employer to inform worker without Social Security account number

An employer shall inform each worker who has not secured a Social Security account number that such number must be filed on or before the seventh day after the date on which the worker first performs services in employment, except that the application shall be filed on or before the date the employment is terminated if such date precedes such seventh day.

#### 12:16-1.5 Employer to inform worker in certain cases

An employer shall inform workers that they should apply at any Social Security district office or branch office with respect to replacement of a lost Social Security account number card, change of name because of marriage or otherwise, or correction of any inaccurate information given when applying for a Social Security account number.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

## SUBCHAPTER 2. RECORDS

### 12:16-2.1 Payroll records

(a) Every employing unit having workers in employment, regardless of whether such unit is or is not an "employer" as defined in the Unemployment Compensation Law, shall keep payroll records which shall show, for each pay period:

1. The beginning and ending dates;
2. The full name of each employee and the day or days in each calendar week on which services for remuneration are performed;
3. The total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States or the amount of remuneration actually received by the employee from his employing unit, whichever is the higher; and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
4. The total amount of all remuneration paid to all employees;
5. The number of weeks worked.

Amended by R.1995, d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### Case Notes

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

### 12:16-2.2 Individual worker records

(a) Each employing unit shall maintain a record for each worker engaged in employment containing:

1. Full name, address, and Social Security account number;
2. Total remuneration paid in each pay period showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States, or the amount of remuneration actually received by the employee, whichever is the higher, and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
3. An entry under the heading "special payments" of the amount of any special payments such as bonuses and gifts which have been paid during the pay period but which relate to employment in a prior period. The following shall be shown separately under this heading: cash payments, cash value of other remuneration, the nature of such payments, the period during which the services were performed for which special payments were payable;
4. The date hired, rehired and returned to work after temporary layoff. The date separated from employment and the reason for such separation;
5. Such information as may be necessary to determine remuneration on a calendar week basis.
6. The number of base weeks (see N.J.S.A. 43:21-19(t)) and wages.

Amended by R.1995, d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### Case Notes

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

### 12:16-2.3 Records defined

Records are defined as all books of original entry plus any summarizations or other media used to post to a general ledger or its equivalent as well as all Federal and State tax returns. Records shall also include machine sensible data

media used for recording, consolidating, and summarizing accounting transactions within an employing unit's automatic data processing system.

#### 12:16-2.4 Records retention

(a) All records required by these regulations shall be kept safe and readily accessible at the New Jersey place of business of the employing unit, unless it has been shown to the satisfaction of the Department that this would create an undue hardship. Such records shall at all reasonable times be open for inspection by authorized representatives of the Department and shall be retained for the current calendar year and for the four preceding calendar years.

(b) Once an employer becomes inactive, such employer shall notify the Controller or his or her designee as to the location of records necessary to determine eligibility of benefits for former employees. These records must be kept accessible for the subsequent six quarters. Thereafter, upon request of the employer, the Controller or his or her designee will grant permission for the records to be destroyed before expiration of the period for retention referred to in (a) above if all potential benefit claim issues have been finalized.

Amended by R.1995, d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### Case Notes

Every employer must keep true and accurate employment records, open to inspection and copying by a representative of the Division of Unemployment and Temporary Disability Insurance. *State v. Moore*, 158 N.J.Super. 68, 385 A.2d 867 (App.Div.1978).

### SUBCHAPTER 3. POWER OF ATTORNEY

#### 12:16-3.1 Power of attorney: requirements

(a) An employer may grant power of attorney to another person to represent the employer before the Employment Security Agency in all matters affecting quarterly contribution reports, experience rating, tax liability, and claims for benefits.

(b) The power of attorney document must contain the following:

1. The corporate seal unless the employer is an individual or a partnership;
2. The signature of the employer(s) or duly authorized corporate officers;
3. Specific mention of the Employment Security Agency as the entity before whom representation will be made on behalf of the employer;
4. The signature of a notary public and the expiration date of commission;

5. The signature of the representative and a statement acknowledging power of attorney authorization.

(c) If the address of record for the employer is changed to that of the representative on the tax file, the benefit file, or both, the representative must accept all reports, notices, billings, and correspondence pertinent to the particular file on which the address had been changed.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (c), substituted "representative on the tax file" for "representative on the status (tax) file".

### SUBCHAPTER 4. REMUNERATION

#### 12:16-4.1 Remuneration defined

(a) The New Jersey Unemployment Compensation Law, at N.J.S.A. 43:21-19(p), states that "Remuneration" means all compensation for personal services, including commissions and bonuses and the cash value of all compensation in any medium other than cash.

(b) The following remuneration issues are discussed in N.J.A.C. 12:16-4.2 through 4.17.

1. Sick leave payments;
2. Fringe benefit payments;
3. Section 401(k) plans;
4. Push payments;
5. Officer's remuneration;
6. Back pay awards;
7. Residuals, aliens;
8. Other remuneration;
9. Tips and gratuities;
10. Temporary disability payments;
11. Personal use of a company vehicle;
12. Dependent care assistance programs;
13. Interest on below-market interest rate loans;
14. Section 125 Cafeteria plans;
15. Stock options;
16. Deferred payments; and
17. Co-employed individuals, employee leasing clients.

Amended by R.1990 d.217, effective April 16, 1990.

See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

In b: changed "4.9" to "4.14."

Added (b) 10-13.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).  
Amended by R.2005 d.108, effective April 4, 2005.  
See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

In (b), amended the N.J.A.C. reference in the introductory paragraph and added 15 through 17.

**12:16-4.2 Sick leave payments**

(a) Sick leave payments (also known as continuation pay) made by employers to employees for periods of disability

are wages within the meaning of the Unemployment Compensation and Temporary Disability Benefits laws for both tax and benefit entitlement purposes.

(b) Those types of sick leave payments deemed wages and therefore taxable are:

1. Continuation of pay during periods of sickness or injury;

2. Payment of the difference between temporary disability benefits paid under the State Plan or an approved Private Plan and full salary;

3. Payment of the difference between Workers' Compensation benefits and full salary;

4. Payment of unused sick leave made to an employee while still in employment.

(c) Those types of sick leave payments deemed benefits and therefore non-taxable are:

1. Benefits paid from the State Plan for temporary disability insurance;

2. Benefits paid by an insurance carrier under an approved Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);

3. Benefits paid by a union under an approved Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);

4. Benefits paid by the employer under an approved self-insured Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);

5. Benefits paid for work related injury under Workers' Compensation;

6. Benefits paid to employees in the public sector for work related illness under Sick Leave Injury (SLI);

7. Payment of sick leave made after retirement or separation from employment.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

### 12:16-4.3 Fringe benefit payments

(a) Fringe benefit payments which result in a direct benefit to the employee are generally taxable. Fringe benefit payments which take the form of a reimbursement or a health benefit are usually non-taxable.

(b) Taxable fringe benefits may include:

1. Vacation pay (both before and after dismissal);

2. Separation/severance pay (if made under a contractual obligation or by custom);

3. Guaranteed annual wage payments;

4. Difference between regular salary and jury duty pay;

5. Employer payments to employees' IRA;

6. Draw against future earnings (taxable when paid) unless the employer takes legal steps to recoup the overpayments;

7. Payment of employee's portion of Federal or State income tax unemployment/disability insurance taxes, or social security tax.

8. Wages paid after death to either the estate or beneficiaries within the same calendar year as the death;

9. Moving expense payments to the employee to the extent the payments exceed actual employee expenses; and

10. Expense allowances for which no accounting is made to the employer.

(c) Non-taxable fringe benefits may include:

1. Employer payments to retirement plans including, SEP-IRA plans (See (d) below);

2. Payments to hospitalization and medical/dental plans, and payments made under such plans;

3. Payments to union welfare funds;

4. Life insurance premiums;

5. Tuition reimbursements and payments.

(d) In general, the entire gross remuneration for services rendered by an employee is taxable up to the maximum yearly wage base. This includes all types of deferred compensation, including amounts deducted for payment into a deferred savings program that lets the employee set aside money for his or her retirement.

Amended by R.1990 d.217, effective April 16, 1990.  
See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

In (b): added 8-10.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2000 d.68, effective February 22, 2000.  
See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

In (d), inserted ". This includes all types of deferred compensation," following "base".

### 12:16-4.4 Section 401(k) Plans

Effective January 1, 1984, employer contributions to a cash or deferred arrangement under Section 401(k) of the Internal Revenue Code will be taxable to the extent that the employee could have elected to receive cash in lieu of the employer's making the contribution. In addition, employer contributions to an annuity contract covered under Section 403(b) of the Internal Revenue Code are taxable.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

### 12:16-4.5 Push payments

(a) Push payments are commission or bonus type payments made by a manufacturer to sales persons for "pushing" a certain product or product lines. These may also be referred to as push money, premiums, or incentive payments. Push payments take differing formats and are made in varying manners.

1. Push payments made directly by a manufacturer to its own sales-persons are taxable.

2. Payments made by one entity to employees of another are taxable remuneration to the actual employer

when made pursuant to a contractual obligation, written or oral, expressed or implied.

#### 12:16-4.6 Officer's remuneration

(a) For the purpose of the Unemployment Compensation and Temporary Disability Benefits Laws, each officer of a corporation receiving remuneration for any personal services performed for that corporation shall be considered to be in its employ, and such payments shall be taxable.

(b) An election to report under the Small Business Corporation provisions of Section 1368 of the Internal Revenue Code whereby corporate profits may be distributed as dividends to shareholders, commonly referred to as Subchapter S or 1120S corporations, shall not affect (a) above. Reasonable remuneration as determined through facts and circumstances, shall be considered wages for benefit and contribution purposes when paid to officers of corporations having made such an election if the officers perform any services.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### 12:16-4.7 Back pay, residuals, aliens

(a) Back pay awards are taxable remuneration where the discharge from employment was held invalid and reinstatement of the job ordered. Back pay is not taxable if considered damages for an illegal act without job reinstatement.

(b) Residual payments made to entertainers for reuse of commercial recordings are taxable if the original services were performed in this State.

(c) All wages paid to aliens are taxable and reportable under a valid Social Security number. This subsection applies both to aliens who are workers legally admitted to the United States and to aliens who are workers and whose work status remains undocumented.

Amended by R.1989 d.208, effective April 17, 1989.  
See: 21 N.J.R. 281(a), 21 N.J.R. 1015(a).

At (c) deleted all reference to Federal Regulation 31.3306(c)(18)-1, added, "All wages paid to aliens are taxable and reportable ...".

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2006 d.425, effective December 4, 2006.

See: 38 N.J.R. 3229(a), 38 N.J.R. 5162(a).

In (c), inserted the last sentence.

#### 12:16-4.8 Other remuneration

(a) Payments in kind for personal services such as meals, board, lodging or any other payment in kind received by a worker from an employing unit in addition to or in lieu of (rather than as a deduction from) money wages shall be deemed to be remuneration paid by the employing unit for the purposes of determining eligibility for unemployment and disability benefits unless such payments represent reimbursement of travel and subsistence expenses incurred by the worker while away from home. This regulation shall have no

bearing on the New Jersey Wage and Hour Laws and regulations or the U.S. Fair Labor Standards Laws and Regulations.

(b) The Controller or his or her designee shall determine or approve the cash value of such payments in kind, and such cash value shall be used in determining the wages payable or paid to such worker and in computing contributions due under the law.

(c) Money value for board and room, meals and lodging shall be treated as follows:

1. Where a money value for board and room, meals and lodging, or for any of such items, furnished a worker is agreed upon in a contract of hire, the amount so agreed upon shall be deemed the cash value of such item or items.

2. The Controller or his or her designee shall establish rates for board and room, meals and lodging furnished in addition to, or in lieu of, money wages, unless the employer can establish different costs determined by generally accepted accounting principles, as follows:

i. Full board and room, weekly—35 percent of the current taxable wage base divided by 52;

ii. Meals per day—20 percent of the current taxable wage base divided by 260;

(1) If less than 3 meals per day, the individual meals shall be valued as follows:

(A) Breakfast (meals served between 12:01 A.M. and 11:00 A.M.)—30 percent of meals rate;

(B) Lunch (meals served between 11:00 A.M. and 4:00 P.M.)—30 percent of meals rate;

(C) Dinner (meals served between 4:00 P.M. and 12:00 midnight)—40 percent of meals rate; and

iii. Lodging per week—15 percent of the current taxable wage base divided by 52.

(d) Dollar amounts shall be computed to two decimal places and rounded to the nearest one-tenth of one dollar.

Amended by R.1986 d.23, effective February 3, 1986.

See: 17 N.J.R. 2859(a), 18 N.J.R. 284(a).

Remuneration rates raised.

Amended by R.1989 d.303, effective June 5, 1989.

See: 21 N.J.R. 690, 21 N.J.R. 1576(a).

Full board and room, meals and lodging rates changed from dollar amounts to percentages of the current taxable wage base divided by 52, in (c). Method of computation of dollar amounts added at (d).

Public notice specifying dollar amounts for categories in (c).

See: 21 N.J.R. 3564(c).

Public Notice: Rates for board and room, meals and lodging furnished by employers.

See: 22 N.J.R. 3057(c); 23 N.J.R. 2787(a); 24 N.J.R. 3182(a); 25 N.J.R. 6067(a); 26 N.J.R. 4228(c).

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Public Notice: Rates for board and room, meals and lodging furnished by employers.

See: 28 N.J.R. 4121(b).

Public Notice: Rates for board and room, meals and lodging furnished by employers.

See: 28 N.J.R. 4817(a).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 29 N.J.R. 4201(b).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 30 N.J.R. 3556(a).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 31 N.J.R. 3537(b).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 32 N.J.R. 4146(b).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 33 N.J.R. 3771(a).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 35 N.J.R. 3967(b).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 37 N.J.R. 3463(b).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 38 N.J.R. 3681(b).  
 Public Notice: Rates for board and room, meals and lodging furnished by employers.  
 See: 40 N.J.R. 220(b).

#### 12:16-4.9 Tips and gratuities

If a worker receives gratuities and/or tips regularly in the course of employment from other than the employer, the gratuities and/or tips so received, if reported in writing to the employer, shall be considered taxable. The entire amount of charge tips are covered wages and are taxable to the maximum base even though the employee has not reported the entire amount to the employer. If the employee omits reporting tips, but the employer considers tips as part of an hourly rate for meeting the requirements of a Federal or State minimum wage law, it is considered that, in effect, tips have been reported to the employer to that extent and are therefore included as taxable wages.

Amended by R.1995 d.138, effective March 6, 1995.  
 See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### 12:16-4.10 Temporary disability payments

(a) Payments made to employees under an approved Private Plan shall be considered as taxable remuneration, if payments are for a period of seven or less consecutive days following the date of disability.

(b) Payments made for periods after the seventh consecutive day following the date of disability shall not be considered as taxable.

(c) If the period of disability extends to the twenty-second day of disability and payment is made for the twenty-second day, then the first seven days, referred to in (a) above would not be considered taxable.

New Rule, R.1986 d.21, effective February 3, 1986.  
 See: 17 N.J.R. 2850(b), 18 N.J.R. 284(b).

#### 12:16-4.11 Personal use of a company vehicle

(a) The personal use of a company vehicle shall be taxable remuneration.

1. Such personal use shall be valued pursuant to Section 61 of the Internal Revenue Code.

(b) If personal use is present (except for de minimis usage such as a lunch stop during company business), and such personal use has not been properly reported, the personal use shall be valued at the highest manner available.

New Rule, R.1990 d.217, effective April 16, 1990.  
 See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

#### 12:16-4.12 Dependent care assistance programs

(a) Employer contributions on behalf of, or reimbursements to, an employee under a Dependent Care Assistance Program (Section 129 of the Internal Revenue Code) shall be taxable remuneration.

(b) If a Dependent Care Assistance Program is financed by an employee voluntary salary reduction, the amount of remuneration received under the program shall be determined as that amount which the employee could have elected to receive in lieu of making the contribution.

New Rule, R.1990 d.217, effective April 16, 1990.  
 See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

#### 12:16-4.13 Interest on a below-market interest rate loan

The amount of remuneration generated by a below-market interest rate loan shall be the same amount as that computed for purposes of F.U.T.A.

New Rule, R.1990 d.217, effective April 16, 1990.  
 See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).

#### 12:16-4.14 Section 125 cafeteria plans

Employer contributions to a cafeteria plan arrangement pursuant to Section 125 of the Internal Revenue Code shall be taxable remuneration to the extent that the employee could have elected to receive cash in lieu of the employer's making the contribution.

New Rule, R.1990 d.217, effective April 16, 1990.  
 See: 22 N.J.R. 603(b), 22 N.J.R. 1269(a).  
 Amended by R.1995 d.138, effective March 6, 1995.  
 See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### 12:16-4.15 Stock options

(a) The value of a stock option is taxable remuneration at the time the option is exercised when the individual exercising the option is a current employee. The value of the stock option is also taxable remuneration when exercised after separation from employment but during the same calendar year in which the separation occurred.

(b) The value of a stock option is not taxable remuneration when exercised by a former employee in a calendar year following the calendar year in which the separation occurred.

(c) A wholly owned subsidiary company is the employer responsible for contribution payments when an employee of the subsidiary company exercises stock options of the parent corporation.

New Rule, R.2005 d.108, effective April 4, 2005.  
See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

#### 12:16-4.16 Deferred payments

Deferred payment of remuneration for services accrued by an employer that is not included as part of a qualified pension, profit sharing or stock option plans or another pension arrangement where a trust is created is taxable remuneration at the time payment is made.

New Rule, R.2005 d.108, effective April 4, 2005.  
See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

#### 12:16-4.17 Co-employed individuals, employee leasing clients

A client company is the employer responsible for contribution payments when remuneration for services is paid directly by the client company to workers co-employed under an employee leasing agreement.

New Rule, R.2005 d.108, effective April 4, 2005.  
See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

### SUBCHAPTER 5. CONTRIBUTIONS BY EMPLOYERS

#### 12:16-5.1 Accrual as remuneration earned

(a) Employer's contributions shall accrue as remuneration is earned by workers in covered employment, but will not become due until payment or payment in kind is actually or constructively made.

(b) Payment of employers' contributions shall be made as prescribed within this chapter.

Amended by R.1995 d.138, effective March 6, 1995.  
See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

#### Cross References

Unemployment benefits, partial benefits, records in addition to those required under this section, see N.J.A.C. 12:17-4.1.

#### Case Notes

Hirees treated as employees for employment contributions if they lack independent business status. Regency Real Estate Appraisal, Inc. v. Department of Labor, 97 N.J.A.R.2d (LBR) 21.

Service station owner was ordered to pay unemployment compensation contributions on wages paid to mechanic who performed automobile repairs at service station. Carroll t/a Carroll Service v. New Jersey Department of Labor, 96 N.J.A.R.2d (LBR) 108.

Tile setters were contractors' employees, despite fact that tile setters considered themselves to be independent contractors and that it was industry practice to treat them as such, and thus contractors would be required to pay unemployment compensation and temporary disability benefit contribution arrearages. Dandorf and Pezzano v. New Jersey Department of Labor, 96 N.J.A.R.2d (LBR) 105.

Attorney who received percentage of fees generated by other attorneys sharing office was liable for unemployment compensation benefits insurance contributions on wages of other attorneys. Logan v. New Jersey Department of Labor, 96 N.J.A.R.2d (LBR) 102.

Engineer working out of his car was liable for unemployment compensation benefits insurance contributions for typist and draftsman that he occasionally employed. Green v. Department of Labor, 96 N.J.A.R.2d (LBR) 89.

Travel agency was required to pay unemployment compensation insurance tax for agents who booked travel arrangements out of central office. Another World of Travel v. New Jersey Department of Labor, 96 N.J.A.R.2d (LBR) 87.

Employer's failure to present evidence that former employee receiving unemployment compensation benefits had customarily engaged in separate business supported assessment for employer's failure to pay unemployment insurance. Le Fante Associates Corp. v. New Jersey Department of Labor, 96 N.J.A.R.2d (LBR) 81.

Science equipment salespersons and consultants were not independent contractors for purposes of unemployment compensation and temporary disability insurance contributions. Arthur Williams & Associates, Inc. v. New Jersey Department of Labor, 96 N.J.A.R.2d (LBR) 63.

Part-time business which was not financially independent of employer warranted unemployment insurance contribution assessment. Software Systems v. New Jersey Department of Labor, 96 N.J.A.R.2d (LBR) 25.

Newspaper publisher must make unemployment insurance contributions for telemarketers. New Jersey Shield Publishing Co. v. New Jersey Department of Labor, 96 N.J.A.R.2d (LBR) 22.

Consultant to textile producer qualifies as employee rather than as exempt independent contractor for purposes of unemployment insurance contributions. Sullivan, Carson, Inc. v. Department of Labor, 96 N.J.A.R.2d (LBR) 17.

Courier service must make unemployment insurance contributions for couriers who did not qualify as independently established operators. Cardar Enterprises v. Department of Labor, 96 N.J.A.R.2d (LBR) 14.

#### 12:16-5.2 Due dates

(a) Employer's contributions shall be paid and contribution reports filed on a quarterly basis, for all employers other than domestic employers, as follows:

<u>Quarter Ending</u>	<u>Due Date</u>
March 31	April 30
June 30	July 30
September 30	October 30
December 31	January 30

Effective January 1, 2000, domestic employers shall pay contributions and file a contribution report on an annual basis. For the calendar year ending December 31, the payment of contributions and the filing of the contribution report would be due January 31 following the close of the calendar year.

(b) Notwithstanding (a) above, the Controller or his or her designee is authorized to require an employer or employers to

file contribution reports and pay contributions on a monthly or other basis when, in his or her discretion, it is considered necessary to do so.

Amended by R.1986 d.22, effective February 3, 1986.

See: 17 N.J.R. 2851(a), 18 N.J.R. 285(a).

Due dates for July, October and January changed from "31" to "30"; (c) deleted.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2000 d.68, effective February 22, 2000.

See: 31 N.J.R. 4218(a), 32 N.J.R. 709(a).

Rewrote (a).

#### Cross References

Unemployment benefits, partial benefits, records in addition to those required under this section, see N.J.A.C. 12:17-4.1.

#### Case Notes

Penalties for failing to pay employer contributions could not be reduced for cooperation. *South Jersey Drywall Co., Inc. v. New Jersey Department of Labor*, 92 N.J.A.R.2d (LBR) 35.

### 12:16-5.3 Payment of contributions

(a) The payment for each reporting period shall include contributions computed with respect to wages paid for employment in all work periods (weekly, biweekly, semi-monthly, monthly) ended within the reporting period.

(b) In computing and paying employer contributions to the Unemployment Compensation Fund or the State Disability Benefits Fund, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(c) Payment of contributions, except for payment by electronic means, shall be submitted with contribution reports.

(d) Payment of contributions by electronic means includes, but is not limited to, electronic funds transfer (EFT) or Internet methods and shall comply with the provisions regarding payment by electronic means contained in N.J.S.A. 54:48-4.1 et seq., which provisions are incorporated herein by reference.

Amended by R.1995 d.138, effective March 6, 1995.

See: 27 N.J.R. 61(a), 27 N.J.R. 919(a).

Amended by R.2005 d.108, effective April 4, 2005.

See: 36 N.J.R. 5651(a), 37 N.J.R. 1030(a).

Added (c) and (d).

### 12:16-5.4 First contributions of newly subject employer

(a) Except as to liability by election as provided in N.J.A.C. 12:16-14 (Election of Coverage), the first contribution payment of an employer who becomes newly liable in any calendar year shall be payable on or before the due date of the reporting period in which the subject status occurs.